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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,523	11/15/2000	David A. Kapilow	1999-0096-3	6109

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EXAMINER

HARPER, V PAUL

ART UNIT	PAPER NUMBER
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2654

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/700,523	Applicant(s) KAPILOW, DAVID A.	
	Examiner V. Paul Harper	Art Unit 2654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/700,524 in view of Bialik (U.S. Patent 6,389,006), hereinafter referred to as Bialik.

Regarding **claim 1**, Application No. 09/700524 (claim 1) claims:

- concealing the effect of missing speech information on generated speech, said speech information having been compressed and transmitted in packets to a receiver which does not receive one or more of such packets, the method comprising the steps of (claim 1, lines 3-11):

- forming a speech signal based on received packets representing speech information (claim 1, lines 9-13);

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- in response to a determination that a packet is not available at the receiver to form the speech signal, synthesizing a portion of the speech signal corresponding to the unavailable packet using a portion of the previously formed speech signal (claim 1, lines 9-11).

But application No. 09/700524 does not specifically claim “wherein the number of pitch periods of the previously formed portion used in such synthesis is greater for speech of a fundamental frequency above a threshold than for speech of a fundamental frequency below the threshold.” However, the examiner contends that this concept was well known in the art, as taught by Bialik.

- In the same field of endeavor, Bialik teaches methods of encoding and decoding speech for lossy transmission networks. In particular, Bialik teaches that when a packet is lost, the last 120 samples of the last good frame are used to interpolate the lost packet, where it is necessarily true that for a fixed interval **any** fundamental frequency chosen as a threshold has a greater number of pitch periods for a fundamental frequency above the threshold than for a fundamental frequency below the threshold.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify application No. 09/700524 (claim 1) by using the steps, as taught by Bialik, because the relationship between pitch period and fundamental frequency was well known.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Bialik (U.S. Patent 6,389,006), hereinafter referred to as Bialik.

Regarding **claim 1**, Bialik teaches methods for encoding and decoding speech for lossy transmission networks. Bialik's methods include the following steps:

- concealing the effect of missing speech information on generated speech, said speech information having been compressed and transmitted in packets to a receiver which does not receive one or more of such packets, the method comprising the steps of (col. 1, lines 36-41, handing lost packets when transmitting compressed voice signals):
 - forming a speech signal based on received packets representing speech information (col. 1, lines 36-41, decoding voice signals);
 - in response to a determination that a packet is not available at the receiver to form the speech signal, synthesizing a portion of the speech signal corresponding to the unavailable packet using a portion of the previously formed speech signal (col. 1, lines

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41-45, utilizing already stored information to interpolate what the lost packet might sound like),

- wherein the number of pitch periods of the previously formed portion used in such synthesis is greater for speech of a fundamental frequency above a threshold than for speech of a fundamental frequency below the threshold (col. 2, line 61 through col. 3, line 23, last 120 samples of the last good frame are used to interpolate the lost packet, where it is inherently true that for a fixed interval **any** fundamental frequency chosen as a threshold has a greater number of pitch periods for a fundamental frequency above the threshold than for a fundamental frequency below the threshold).

Response to Arguments

3. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

4. Furthermore, the Examiner directs the Applicant to the following quote for the MPEP (section 804 I B) regarding provisional double patenting rejections of copending applications.

B. Between Copending Applications—Provisional Rejections

Occasionally, the examiner becomes aware of two copending applications filed by the same inventive entity, or by different inventive entities having a common inventor, and/or by a common assignee that would raise an issue of double patenting if one of the applications became a patent. Where this issue can be addressed without violating the confidential status of applications (35 U.S.C. 122), the courts have sanctioned the practice of making applicant aware of the

potential double patenting problem if one of the applications became a patent by permitting the examiner to make a "provisional" rejection on the ground of double patenting. In re Mott, 539 F.2d 1291, 190 USPQ 536 (CCPA 1976); In re Wetterau, 356 F.2d 556, 148 USPQ 499 (CCPA 1966). The merits of such a provisional rejection can be addressed by both the applicant and the examiner without waiting for the first patent to issue.

The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in one of the applications. If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.

If the "provisional" double patenting rejections in both applications are the only rejections remaining in those applications, the examiner should then withdraw that rejection in one of the applications (e.g., the application with the earlier filing date) and permit the application to issue as a patent. The examiner should maintain the double patenting rejection in the other application as a "provisional" double patenting rejection which will be converted into a double patenting rejection when the one application issues as a patent.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to V. Paul Harper whose telephone number is (571) 272-7605. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil can be reached on (571) 272-7602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

03/23/2005

V. Paul Harper
Patent Examiner
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A handwritten signature in black ink, appearing to read "V. Paul Harper", is positioned to the right of the typed name.